2011

Rhonda H. Malloy v. Mary Beth Malloy : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

RHONDA H. MALLOY, an individual; RHONDA H. MALLOY, a personal Representative of the Estate of DAN MALLOY (deceased), Appellant, v. MARY BETH MALLOY, an individual, Appellee,	**BRIEF OF THE APPELLEE** **App. No. 20110704-CA** **Civil No. 100904217**

ON APPEAL FROM THE SECOND DISTRICT COURT, WEBER COUNTY UTAH

JASON C. HUNTER, Bar No. 10143 **JOHN V. MAYER, Bar No. 10959** **PIA ANDERSON DORIUS REYNARD & MOSS, LLC** **222 South Main Street, Suite 1830** **Salt Lake City, Utah 84111** **Telephone: (801) 350-9000** **Attorneys for Appellant**	**JONATHAN BACHISON, Bar No. 12436** **2650 Washington Blvd., Suite 102** **Ogden, UT 84401** **Telephone: (801) 436-7529** **Email: jbachisonlaw@gmail.com** **Attorney for Appellee**

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LIST OF THE PARTIES

The following are a list of all the parties to the proceeding in district court:

1. Rhonda H. Malloy, individually and as Personal Representative of the Estate of Dan Malloy, Plaintiff/Appellant

2. Mary Beth Malloy, Defendant/Appellee

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(j).

STATEMENT OF THE ISSUES

Appellee agrees as to the Statement of the Issues as indicated by Appellant.

STATEMENT OF THE CASE

This case is about whether Mary Malloy, the ex-wife of a deceased federal employee, Dan Malloy, has the right to keep proceeds paid to her from her ex-husbands life insurance policy even though the deceased had subsequently married Rhonda Malloy and never changed the designation of beneficiary on his policy. Mary Malloy was married to Dan Malloy for nearly 25 years. They had been divorced for two years when Dan married Rhonda. Dan then died three years later. His widow, Rhonda became the personal representative and heir to his estate.

In 1989, Dan obtained a life insurance policy through the Federal Employees Group Life Insurance ("FEGLI") in the amount of $50,000. He designated Mary Beth as the beneficiary of the policy. After Dan's death, Mary Beth was paid $50,000 by FEGLI. Rhonda also sought the proceeds of the policy, but was denied because she was not the designated beneficiary of the policy. Rhonda then commenced suit against Mary Beth to recover the proceeds of the policy because she felt that she was entitled to the proceeds instead of Mary Beth.

The district court case was commenced under the case number 100904217 on June 2, 2010. (R. 1-10.) The causes of action by Rhonda against Mary Beth were for breach of contract, civil contempt, breach of duty of good faith and fair dealing, and unjust enrichment under Utah code Ann. § 75-2-804. (R. 1-10.) Both sides filed motions for summary judgment and the court heard oral argument on April 6, 2011. (R. 58, 100, 227.) Both sides' arguments were based on the interpretation of Utah Code Ann. § 75-2-804, wherein the legislature has indicated that revocation of former spouse as a beneficiary automatically occurs upon divorce unless a

governing instrument expressly indicates otherwise. Rhonda claimed that there was no express language that indicated that automatic revocation did not occur. Mary Beth claimed that there was express language that invalidated automatic revocation. Further Mary Beth also claimed that FEGLI policies were preempted by federal law and that Utah code could not affect the administration of FEGLI benefits. (R. 227.)

During the course of the briefing for the motions for summary judgment, Mary Beth submitted a policy, a policy handbook or manual, a copy of the original signed designation of beneficiary form indicating Mary Beth as the beneficiary, a copy of the form policy holders sign to obtain insurance, several printouts from the website of the U.S. Office of Personnel Management ("OPM"), the government agency responsible for administrating the benefits of federal employees, and an Affidavit by Counsel explaining how he obtained all of the above mentioned documents. (R. 76, 126, 240.) During the supplemental briefing, Rhonda objected to the use of all documents except the insurance policy and based her objection on a lack of foundation and authenticity. (R. 228.)

After taking the matter under advisement and requesting additional briefing as to the preemption issue, the trial judge ruled in Mary Beth's favor finding that she was the rightful beneficiary of the proceeds of the FEGLI policy and that there was express language that invalidated any automatic revocation of a beneficiary. (R. 273, 278.)Further, the trial court dismissed all of Rhonda's claims against Mary Beth with prejudice. (R. 278.) The trial court did not directly address the issue of preemption in its ruling. However, by the nature of its ruling, the trial court did not find that Utah Code provided a private cause of action for an estate of a deceased against a beneficiary of a FEGLI policy, otherwise, the court would not have ruled as it did.

STATEMENT OF RELEVENT AND DISPUTED FACTS

Appellee agrees with the statements of facts in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 23, 24, 26.

Appellee disagrees with the statements of facts in paragraphs 16, 17, 22, 25. A further explanation of disputed facts is described paragraph by paragraph in more detail below.

16. Appellee disagrees with the assertions of fact in this paragraph that Mary Beth's exhibits were not properly authenticated and lacked foundation because all documents and/or exhibits were properly authenticated and had foundation.

17. Appellee disagrees with the assertions of fact in this paragraph that Mary Beth's exhibits were unsupported because all exhibits submitted were supported.

22. Appellee disagrees with the assertions that Manual and Master Policy lacked foundation and were not authenticated. Appellant made objections at the hearing as to these issues, but any objections were either ignored or denied by the trial judge because foundation was provided and the documents were authenticated.

25. Appellee disagrees with the assertions that no other support was provided for the Manual or Master Policy documents other than statements from counsel for Mary Beth. Appellant provided the website address and the name and email account from the government agent that provided the documents to him.

SUMMARY OF THE ARGUMENT

Mary Beth was entitled to receive the proceeds of the FEGLI policy because it was undisputed that she was the only designated beneficiary that Dan Malloy ever chose and Dan never submitted any document to ORS to indicate otherwise as required by FEGLI. Further, the

FEGLI policy expressly indicated in multiple places that the designation of beneficiary would not automatically revoke due to a divorce or any other major life change. The designation of beneficiary form expressly informed Dan Malloy that if he *wished* to change a beneficiary, he would have to submit another form and warned him that if a life change occurred, such as divorce, only another properly submitted form would accomplish such a desire. These instructions are contained in manual and the beneficiary designation form.

Further, the Manual and all other relevant forms are incorporated by reference into the contract agreed to by Dan Malloy. The provisions of Utah Code specifically state that automatic revision as a beneficiary occurs upon divorce "except as provided by the express terms of a governing instrument." The definition of a "governing instrument" is broad and includes any dispositive document.

Also, any objection as to authenticity is unsustainable because the manual and supporting documents are official publications and readily available to the public on the ORS website. Official publications are self-authenticating. *See* Utah Rules of Evidence 902(5). Further, the Affidavit provided by counsel stating where he obtained the documents, what version, and providing printouts of additional publications showing that no revisions as to relevant terms of the policy provided a sufficient foundation for the exhibits to be accepted by the trial judge. Therefore, the trial court properly found that the Manual and the Beneficiary Designation Forms were governing instruments that expressly negated an automatic revocation of Mary Beth's status as the designated beneficiary.

Finally, the administration of a FEGLIA policy regarding designation of beneficiaries is preempted by federal law and Utah Code § 75-2-804 cannot effect a change in beneficiaries. Therefore, due to all of these reasons; the trial court was correct in ruling in favor of Mary Beth.

ARGUMENT

I. The District Court Did Not Err in Finding that the Insurance Manual was a "Governing Instrument" under Utah Code Ann. § 75-2-804.

The District Court was correct in finding that the insurance manual, along with other supporting documents were "governing instruments" that determined whether or not one's status as a beneficiary is automatically terminated by divorce pursuant to Utah Code § 75-2-804. When the court decided to accept the insurance manual as a "governing instrument", it stated the reason being that the manual was incorporated into the policy by reference.

The policy in this dispute is for a Federal Group Life Insurance Policy ("FEGLI Policy"). This policy is governed by the Federal Group Life Insurance Act ("FEGLIA"). Under FEGLIA, the Office of Personnel Management ("OPM") administers FEGLI policies to federal employees, but does not issue individual policies to each employee. *See* 5 U.S.C. § 8709. Employees who enroll in the FEGLI program file a standard form ("SF 2817"), *see* (R. 249), with their employer as well as a designation of beneficiary form ("SF 2823"). (R. 178-179.) Included as part of the SF 2817 executed by employees enrolling in FEGLIA, are instructions to the employee which incorporate by reference the FEGLI Handbook (RI 76-21) which also happens to be the "Insurance Manual" of this dispute. (R. 76- .)

The Handbook expressly negates automatic revocation by divorce and is incorporated into a governing instrument executed by the deceased at the time he enrolled in FEGLI benefits. It should also be noted that the deceased or enrollee never actually signs the policy; however, the policy is incorporated by reference just like the insurance manual in the same documents that the deceased actual signs. Further, not only does the "Insurance Manual" indicate that automatic revision does not occur upon divorce, but also the beneficiary designation form indicates this too.

Further, Utah Code Ann. § 75-1-201(19) is broad enough to include documents such as the manual or executed forms as a "governing instrument." The statute allows for "a dispositive, appointive, or normative instrument of *any* similar type." *See* Utah Code Ann. § 75-1-201(19) (*emphasis added*). The beneficiary designation form and the enrollment form are both part of the insurance policy because they are the only documents ever actually executed to gain the benefit of the policy, they are also dispositive instruments in and of themselves as well. Therefore, because these documents reference the "Insurance Manual," the District Court was correct in finding the manual to be a "governing instrument" and its decision should be upheld.

II. The Insurance Manual and Master Policy Documents Relied Upon by the District Court in Granting Mary Beth's Motion for Summary Judgment Had Foundation and Were Properly Authenticated.

Appellant raises two issues in their argument: first that the court improperly allowed an "Insurance Manual" into evidence without authenticating the manual; and second, the court also erred by not finding that there was a lack of foundation for the manual. Appellant is wrong on both issues as will be discussed below.

As to the issue of authentication, Rule 902 of the Utah Rules of Evidence indicates that certain forms of evidence are self-authenticating. Section (5) indicates that official publications like books, pamphlets, or other publication purporting to be issued by a public authority are self-authenticating. *See* Utah Rule of Evidence 902(5). Therefore, documents published on the website of a public authority are self-authenticating because they are reliable.

In the present case, the manual and all other documents submitted to the court were obtained from the Office of Personal Management ("OPM") website and are still readily available to the public at their site. OPM is a public authority that handles the administration of benefits for federal employees. Therefore, the insurance manual and all other insurance forms

obtained from OPM's website were properly self-authenticated and the District Court did not err by accepting them.

As to the issue of foundation, Counsel for Appellee also submitted an Affidavit indicating where the evidence was obtained. *See* (R. 254.) In the Affidavit, Counsel explains that he went to the OPM website and downloaded forms thereon. Counsel also indicates that he had conversations with two OPM employees. Through those conversations, it was indicated that FEGLI participants are not issued individual policies, but are referred to a Policy Handbook, which was then obtained from the OPM website. Further, in an email sent to Counsel from a FEGLI employee, Counsel was provided with a copy of the master policy and was also informed that any changes that have ever occurred on the policy are published via letter on the OPM website. These changes to the policy were also downloaded from the OPM website and submitted as exhibits, these updates would also be self-authenticating under Utah Rule of Evidence 902(5). (R. 126- .) Taking into account that most of the information provided to court by counsel is readily available online, his affidavit would be sufficient to lay a foundation upon which the court could reasonably accept the documents for what counsel purported them to be.

To further elaborate the point, it seems like Rhonda objects to anything less than a FEGLI employee literally flying to Utah just to testify that the manual they previous sent in an email is *thee* policy and the same policy in effect when Dan Malloy signed his application. Because such a request is unreasonably onerous, the trial judge was well within his discretion to accept Mary Beth's counsel's affidavit to provide a proper foundation for the policy, manual, and other documents previously mentioned. Further, there was enough supporting evidence to prove that the policy and manual submitted where substantively the same as what Dan Malloy signed and that such evidence could reasonably be relied upon by the court. Therefore, no evidentiary errors

occurred. However, even if there were admissibility problems, any problems would not undo the ultimate end result as will be indicated in greater detail below in Mary Beth's argument relating to preemption.

III. The Governing Instruments of the Policy Contain Express Language Preventing the Automatic Revocation by Divorce Provisions of the Utah Code Ann. § 75-2-804.

Even assuming that the insurance manual is inadmissible, Appellant agrees that the policy and the beneficiary designation form are governing instruments. On the beneficiary designation form, it expressly indicates in a large enclosed box the following: "Designations should be kept current. With changes in family status (marriage, divorce, death, births, etc.), you may *wish* to make changes in designation." (R. 178-179.) The form recognizes that divorce might necessitate a change in beneficiary, but only if the insured *wishes* a change. Further, the form also indicates under the section "Regulations", part (f), that the only way that the designation of beneficiary is automatically cancelled is if the employee stops being insured.

However, more blatantly apparent and obvious that an automatic revocation does not occur is found in the Manual; thus it explains Rhonda's desperate attempt to eliminate it from evidence. The Manual contains an entire section devoted to this issue. Under the title, "Importance of Updating Designations", it clearly states,

> It is your responsibility to ensure that your Designation of Beneficiary remains accurate and reflects your intentions. You should be aware that benefits will be paid based on a valid Designation, regardless of whether that Designation still reflects your intentions.
>
> A divorce does *not* invalidate a Designation that names your former spouse as beneficiary.

See FEGLI Handbook, Chapter on Order of Precedence and Designation of Beneficiary. http://www.opm.gov/insure/life/reference/handbook/designt2.asp#designation of beneficiary. (R.

76- .) Because of this express language, automatic revision does not occur under Utah Code Ann. § 75-2-804 even if the Utah statute was not preempted from applying to a FEGLI policy. Therefore, the trial judge's holding stating such should be upheld because it was correct.

IV. Even if FEGLI Policies Fall Within Utah's Definitions of Utah Code Ann. § 75-2-804, Application of the Statute to FEGLI Policies is Preempted by Federal Law.

Notwithstanding all previous arguments made, perhaps the most important issue before the Court in this matter is that FEGLIA is an inflexible statutory scheme which preempts Utah Code Ann. § 75-2-804 inasmuch as it attempts to give force and effect to a beneficiary other than the one designated by Dan Malloy. Rhonda cites *O'Neal v. Gonzalez*, 839 F.2d 1437, 1440 (11th Cir. 1988) for the argument that the goal of FEGLIA is merely just to achieve administrative convenience and avoid delay. It is baffling that Rhonda would fail to realize that in the same case, the 11th Circuit studied at length the intent of Congress and determined that the purpose of FEGLIA's preemption was not merely for convenience, but also "for the benefit of designated beneficiaries" and that it establishes "an inflexible rule that the beneficiary designated in accordance with the statute would receive policy proceeds, regardless of other documents or equities in a particular case." *Id.* This highlights one of the courts preliminary remarks that "[a]n insured's designation of beneficiary under the Federal Employees' Group Life Insurance Act (FEGLIA) prevails for all purposes." *Id.* at 1437. This would be true even in circumstances that might appear to have a harsh result. *See id.*

Even the preemption provision of FEGLIA states that it preempts "any contract under this chapter which relate to the nature or extent of coverage or benefits. (including payments with respect to benefits) . . . "5 U.S.C.A. § 8709. The purpose of preemption is not, as Plaintiff argues, merely to ensure convenience in administration and efficiency of plans as it *might* have been in the ERISA context as in the case cited by Rhonda, *In re Estate of Paul J. Sauers, III, Deceased,*

971 A.2d 1265 (Pa. Sup. 2009), which has since been reversed for largely the same reasons be explained right now. *See In re Estate of Paul J. Sauers, III, Deceased, 32 A.3d 1241 (Pa. 2011).* The purpose of preemption is primarily because it also entails making sure that beneficiaries receive the full force and effect of a life insurance program controlled exclusively by the federal government for the benefit of employees.

A state law that attempts to alter ownership of the proceeds cannot avoid preemption even where it waits until after they are received by a duly appointed beneficiary. FEGLIA makes this purpose clear in § 8705(a) by commanding that the proceeds "shall be paid according to the order of precedence," and by emphasizing that "a designation . . . of a beneficiary in a . . . document not so executed and filed *has no force or effect.*" (*emphasis added*).5 U.S.C. § 8705(a). Additionally, a state law which attempts to restrict or waive the right to change beneficiary designations automatically by reason of divorce would be in direct conflict with FEGLIA. *See generally* 5 C.F.R. § 870.802(f) (formerly codified as 5 C.F.R. § 870.902(e); *see also Ward v. Stratton, 988 F.2d 65 (8th Cir. 1993).*

Plaintiffs have attempted to claim that a state action is allowed to redistribute proceeds received from FEGLIA by filing a suit directly against the beneficiary after the distribution has occurred. However, the 10th Circuit has indicated that a state's attempt to alter federal law by reallocating FEGLI proceeds is preempted regardless of the equities in a particular case. *See Dean v. Johnson*, 881 F.2d 948, 949 fn. 4 (10th Cir.) *cert denied*, 493 U.S. 1011, 110 S.Ct. 574, 107 L.Ed. 2d 549 (1989). Further, the case cited by Rhonda, *In re Estate of Paul J. Sauers, III, Deceased*, 971 A.2d 1265 (Pa. Sup. 2009), used to support her argument that a private right of action is created by Utah Code Ann. § 75-2-804 even if a plan administrator gives the proceeds to the designated beneficiary that also happens to be an ex-spouse, has now been reversed. *See In*

re Estate of Paul J. Sauers, III, Deceased, 32 A.3d 1241 (Pa. 2011). In its reversal opinion, the Pennsylvannia Supreme Court found that a contrary result would cause havoc for plan administrators having to educate themselves in state laws to avoid potential liability for violating federal law and thereby cause administrative inefficiency and allow states to impermissibly affect federal law. *See generally Sauers,* 32 A.3d at 1257.

It should also be pointed out, that even though the *Sauers* case is distinguishable from the present set off facts because it relates to ERISA instead of FEGLIA, the state of Pennsylvania has now come into agreement with other federal circuit courts finding that federal law cannot be preempted by state laws changing designation of beneficiaries. *See Sauers,* 32 A.3d 1241 (Pa. 2011); *see also O'Neal*, 839 F.2d 1437 (11th Cir. 1988); *Dean v. Johnson*, 881F.2d 948 (10th Cir. 1989).

As for the second case cited by Rhonda, *Stillman v. TIAA-CREF*, 343 F.3d 1311 (10th Cir. 2003), although the case is dealing with Utah Code § 75-2-804(2) and how it is applied retroactively to policies entered into before the automatic revision statute was enacted in 1998, it does not address the issue of the effect of § 75-2-804 as to altering a designation of a beneficiary in a federal policy like FEGLI. Therefore, although it is a good case about how Utah Code § 75-2-804 functions in general, it is not on point or helpful to the present set of facts when dealing with a FEGLI policy. Further, following the thought line presented by Rhonda using this case as the proposed authority to allow Utah Code Ann. § 75-2-804 to alter FEGLI designation of beneficiaries would go against the position of 10th and 11th Circuits.

Therefore, unfortunately for Rhonda, her authority for her position is completely undermined by the very same cases she cited and the conclusion ultimately does not allow her not escape the end result proclaimed in *Dean v. Johnson*, that, Utah Code Ann. § 75-2-804

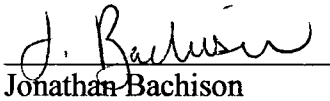
"restricts the federal insured's right to designate a beneficiary and thus cannot be valid under FEGLIA. No other circumstances of payment can override this principle." *Dean*, 881 F.2d at 949. Therefore, for the sake of argument that even if there are problematic evidentiary issues, the district court's end result could not end any differently than summarily finding in favor of Mary Beth.

CONCLUSION

Due to the foregoing reasons, the Court of Appeals should uphold the district court's conclusions that Mary Beth was the beneficiary of the Policy and that her divorce from Dan Malloy did not automatically revoke the designation of beneficiary. The Court of Appeals should also uphold the district court's conclusion that the insurance policy, in the insurance manual and the beneficiary election form were governing instruments. Further, the Court of Appeals should find that the insurance policy and manual were properly self-authenticated and there was sufficient foundation for the district court to accept them into evidence. Finally, the Court of Appeals should find that Utah Code Ann. 75-2-804 is preempted by federal law and does not apply to Dan Malloy's FEGLI policy.

RESPECTFULLY SUBMITTED this 5th day of March, 2012.

LAW OFFICE OF JONATHAN BACHISON



Jonathan Bachison
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2012, I caused a true and correct copy of the foregoing BRIEF OF THE APPELLEE to be delivered via U.S. mail correctly addressed to the following:

Jason Hunter
John Mayer
PIA ANDERSON DORIUS & MOSS
222 S. Main St. STE 1800
Salt Lake City, Utah 84101-2194

Jonathan Bachison

ADDENDUM

5 USC § 8705

(a)Except as provided in subsection (e), the amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b)If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, or if payment to the person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c)If, within 2 years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, and neither the Office nor the administrative office established by the company concerned pursuant to section 8709(b) of this title has received notice that such a claim will be made, payment may be made to the claimant who in the judgment of the Office is equitably entitled thereto, and the payment bars recovery by any other person.

(d)If, within 4 years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the Employees' Life Insurance Fund.

(e)

(1)Any amount which would otherwise be paid to a person determined under the order of precedence named by subsection (a) shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(2)For purposes of this subsection, a decree, order, or agreement referred to in paragraph (1) shall not be effective unless it is received, before the date of the covered employee's death, by the employing agency or, if the employee has separated from service, by the Office.

(3)A designation under this subsection with respect to any person may not be changed except—

(A)with the written consent of such person, if received as described in paragraph (2); or

(B)by modification of the decree, order, or agreement, as the case may be, if received as described in paragraph (2).

(4)The Office shall prescribe any regulations necessary to carry out this subsection, including regulations for the application of this subsection in the event that two or more decrees, orders, or agreements, are received with respect to the same amount.

5 U.S.C. § 8709

(a) The Office of Personnel Management, without regard to section 5 of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:
(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.
(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.
(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.
(c) The Office at any time may discontinue a policy purchased a company under subsection (a) of this section.
(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.
(2) For the purpose of this section, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

5 C.F.R. § 870.802

(a) Except as provided in paragraph (i) of this section, if an insured individual wants benefits paid differently from the order of precedence, he/she must file a designation of beneficiary. A designation of beneficiary cannot be filed by anyone other than the insured individual. Exception: if the insurance has been assigned under subpart I of this part, the insured individual cannot designate a beneficiary; only the assignee(s) can designate beneficiaries.

(b) A designation of beneficiary must be in writing, signed by the insured individual, and witnessed and signed by 2 people. The completed designation of beneficiary form may be submitted to the appropriate office via appropriate methods approved by the employing office. The appropriate office must receive the designation before the death of the insured.

(1) For an employee, the appropriate office is the employing office.

(2) For an annuitant or compensationer, the appropriate office is OPM.

(c) A designation, change, or cancellation of beneficiary in a will or any other document not witnessed and filed as required by this section has no legal effect with respect to benefits under this chapter.

(d) A witness to a designation of beneficiary cannot be named as a beneficiary.

(e) Any individual, firm, corporation, or legal entity can be named as a beneficiary, except an agency of the Federal or District of Columbia Government.

(f) An insured individual (or an assignee) may change his/her beneficiary at any time without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(g) (1) A designation of beneficiary is automatically cancelled 31 days after the individual stops being insured.

(2) An assignment under subpart I of this part automatically cancels an insured individual's designation of beneficiary.

(h) An insured individual may provide that a designated beneficiary is entitled to the insurance benefits only if the beneficiary survives him/her for a specified period of time (not more than 30 days). If the beneficiary doesn't survive for the specified period, insurance benefits will be paid as if the beneficiary had died before the insured.

(i) (1) Except as provided in paragraph (i)(2) of this section, if a court order has been received in accordance with § 870.801(d), an insured individual cannot designate a different beneficiary, unless

(i) The person(s) named in the court order gives written consent for the change, or

(ii) The court order is modified.

(2) If a court order has been received in accordance with § 870.801(d), and the court order applies to only part of the insurance benefits, an insured individual can designate a different beneficiary to receive the insurance benefits that are not included under the court order. If the insured individual does not make a designation for these benefits and there is no previous valid designation on file, benefits will be paid according to the order of precedence shown in § 870.801(a).

(3) If a court order received in accordance with § 870.801(d) is subsequently modified without naming a new person to receive the benefits, and a certified copy of the modified court order is received by the appropriate office before the death of the insured, the insured individual can designate a beneficiary. Benefits will be paid according to the order of precedence shown in § 870.801(d) if the insured individual does not complete a new designation of beneficiary.

Utah Rule of Evidence 902 Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) Domestic Public Documents That Are Not Sealed But Are Signed and Certified. A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), or any law of the United States or of this state.

(5) Official publications. Books, pamphlet, or other publication purporting to be issued by public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

(7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Presumptions Under a Federal Statute. A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. The original or a copy of a foreign record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

The amendment to Rule 803(6) and the addition of Rules 902(11) and 902(12) were made to track the changes made to Federal Rule of Evidence 803(6) and the adoption of Federal Rules 902(11) and 902(12), effective December 1, 2000. The changes to the federal rules benefit from

a federal statute allowing the use of declarations without notarization. Utah has no comparable statute, so the requirements for declarations used under the rule are included within the rule itself.